

REMARKS

Reconsideration and allowance of the subject application are respectfully requested. By this Amendment, Applicant has amended claim 1 and added new claims 23-25. Therefore, claims 1-25¹ are now pending in the Application. Applicant respectfully submits that no new matter is added and traverses all the rejections.

Preliminary matter - Withdrawal of Claims 16, 19 and 20

The Examiner has withdrawn claims 7-20 and 22 from consideration. Although Applicant has elected claims 1-6, 16, 19, 20 and 21 through the election of species group I, the Examiner additionally withdrew claims 16, 19 and 20 citing that the claims are drawn to a non-elected species group II (See Office Action: page 2). Applicant respectfully disagrees.

Applicant respectfully submits that the additionally withdrawn claims 16, 19 and 20 are drawn to the first embodiment of the current application. That is, the additionally withdrawn claims are method claims of the first embodiment of the current application, as exemplarily shown in Fig. 2 of the drawings. Therefore, Applicant respectfully requests that claims 16, 19 and 20 be prosecuted along with the system claims 1-6 which have been examined by the Examiner.

¹ Claims 7-20 and 22 were withdrawn as a result of Applicant's election of species I (See Response to Election of Species Requirement of April 6, 2006).

Claim Rejections - 35 U.S.C. § 103

Claims 1-6 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Lobiondo (U.S Patent No. 5,287,194; “Lobiondo”) in view of Fan et al. (U.S Patent No. 6,310,692; “Fan”).

Amended claim 1 recites, *inter alia*, “when it is determined that the first imaging device is not operable, a second imaging device of the same kind as the first imaging device is *automatically* selected from among the plurality of imaging devices and the imaging job is *automatically* executed by the second imaging device.” Applicant respectfully submits that neither Lobiondo nor Fan, either taken alone or in combination, teaches or suggests the noted features of claim 1.

The Examiner seems to be admitting that the primary reference Lobiondo is deficient with regard to the noted features of claim 1 (See Office Action: page 3). However, the Examiner cites the secondary reference Fan in an attempt to make up for the admitted deficiencies of Lobiondo. Applicant respectfully submits that the secondary reference Fan is pertinent at best to monitoring of printer resources and that Fan altogether fails to teach or suggest “when it is determined that the first imaging device is not operable, a second imaging device of the same kind as the first imaging device is *automatically* selected from among the plurality of imaging devices and the imaging job is *automatically* executed by the second imaging device,” as recited in claim 1 (See Fan: col. 3, lines 5-12). That is, neither Lobiondo nor Fan teaches or discloses the automatic selection of second imaging device of the same kind as the first imaging device when the first imaging device is not operable. Therefore, Applicant respectfully submits that the Examiner has failed to render a valid *prima facie* case of obviousness under 35 U.S.C. § 103 (a).

Further, it appears that the Examiner is asserting that col. 5, lines 15-33 of Lobiondo teaches the “plurality of imaging management devices” recited in claim 1 (See Office Action: page 3, line 8; page 6, lines 10). However, Lobiondo makes it clear that the operation which the Examiner seems to be relying on is performed by the user and *not* by the scheduler 50 described in Lobiondo (See Lobiondo: col. 5, lines 27-33, “The user [emphasis added] may then enter through the user interface a request to utilize a different printer, enter a required completion time and have the scheduler 50 allocate the job to one or more available printers, or choose the selected full print queue if printing is desired at the specific location selected and completion time is not important.”). Therefore, under In re Bell, 26 USPQ2d 1529 (Fed. Cir. 1993), Applicant respectfully submits that method steps such as those performed by an operator, do not establish the presence of elemental features of claims for an apparatus or system (See also Hewlett-Packard Co. v. Mustek Systems Inc., 67 USPQ2d 1825, 1829-30 (Fed. Cir. 2003)).

In view of the foregoing, Applicant respectfully submits that claim 1 is patentable over Lobiondo in view of Fan. Further, with respect to dependent claims 2-6, Applicant respectfully submits that the claims are patentable at least by virtue of their dependency from claim 1.

Claim 21 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Lobiondo in view of Fan and Nosaki (U.S Patent No. 5,673,373; “Nosaki”).

With respect to claim 21, Applicant respectfully submits that the secondary reference Nosaki fails to make up for the noted deficiencies of Lobiondo and Fan. Therefore, Applicant respectfully submits that claim 21 is patentable under the rationale analogous to those discussed with respect to claim 1.

New Claims

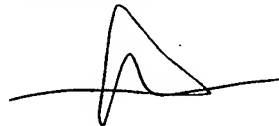
For additional claim coverage merited by the scope of the invention, Applicant has added new claims 23-25. Claims 23 and 24 are based on page 12, lines 15-19 of the Specification. Claim 25 is based on page 15, lines 5-7 of the Specification. Applicant respectfully submits that the new claims are patentable by virtue of their dependency from claim 1.

Conclusion

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

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